

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
SW/corner Smithwood Avenue * DEPUTY ZONING COMMISSIONER
and Edmondson Avenue * OF BALTIMORE COUNTY
(126 Smithwood Avenue) *
11th Election District * Case No. 88-454-SPH
5th Councilmanic District *
James R. Burke, et ux *
Petitioners *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve the nonconforming use of the subject property as a two-apartment dwelling, in accordance with Petitioner's Exhibit 1.

The Petitioners appeared, testified, and were represented by Counsel, Dawn Oxley Musgrave, Esquire. Also appearing on behalf of the Petition were: Janet L. Union, Patricia S. Nunn, W. E. Cadell, H.E. Lacey, and Richard J. Hunt. Mr. & Mrs. Charles Martin appeared as Protestants.

Testimony indicated that the subject property, known as 126 Smithwood Avenue, is zoned D.R. 3-5 and is improved with a one and one-half story brick and shingle dwelling divided into two apartments. Mrs. Audrey Burke testified that she was born in 1928 in the subject dwelling and has resided there since. Mrs. Burke testified that the property was used as a single family dwelling until the death of her grandfather in 1947. At that time, her parents were able to convert the second floor into an independent apartment. Mrs. Burke testified that at all times, the second floor apartment had an outside entrance. She further testified that said apartment has been continually rented with the exception of two months when major remodeling improvements were made. Mrs. Burke testified that the second floor has a kitchen, bath, living room, bedroom and small dining room area.

Ms. Patricia Nunn testified that she was a resident of the upstairs apartment for approximately 13 months between 1951 and 1952.

In further support of their position, the Petitioners introduced five affidavits identified in the record as Petitioner's Exhibits 2A through 2E which are from various residents of the area and/or former tenants of the subject property evidencing the use of 126 Smithwood Avenue as a two-apartment dwelling.

The Petitioners and the Protestants reviewed the 1945 zoning maps and determined that the subject property was zoned "A", Residence Zone, and agreed that the 1945 regulations permitted the use of the property as a two-family dwelling.

Following the testimony of the supporting witnesses, the Protestants agreed that the Petitioners had met their burden of establishing a valid nonconforming use of the subject property as a two-apartment dwelling.

The Petitioners seek relief from Sections 104.1 and 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.).

After due consideration of the testimony and evidence presented, it is clear that a nonconforming use of the subject property as a two-apartment dwelling exists.

Pursuant to the advertisement, posting of the property, and public hearing held, and for the reasons given above, the relief requested in the special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 7th day of June, 1968 that the Petition for Special Hearing to approve the nonconforming use of the subject property as a two-apartment dwelling, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, from and after the date of this Order.

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
of Baltimore County

Dawn Oxley Musgrave, Esquire
One Overbrook Road
Baltimore, Maryland 21228

RE: Petition for Special Hearing
SW/corner Smithwood Avenue and Edmondson Avenue (126 Smithwood Avenue)
11th Election District, 5th Councilmanic District
James R. Burke, et ux - Petitioners
Case No. 88-454-SPH

Dear Ms. Musgrave:

Enclosed please find the decision rendered on the above-referenced case. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal to the County Board of Appeals. For further information on filing an appeal, please contact this office.

Very truly yours,

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
of Baltimore County

AM:bjs

Enclosures

cc: Mr. & Mrs. Charles Martin
121 Smithwood Avenue, Catonsville, Md. 21228

People's Counsel

Ville

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 1st Date of Posting: 4-27-68
Posted for: Special Hearing
Petitioner: James R. Burke, et ux
Location of property: SW/corner of Edmondson Ave and Smithwood Ave (126 Smithwood Ave)
Location of Sign: SW/corner of 126 Smithwood Ave
Remarks: J.R. Burke
Posted by: J.R. Burke
Number of Signs: 1

"DUPLICATE" CERTIFICATE OF PUBLICATION

TOWSON, MD., April 28, 1968
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on April 28, 1968

THE JEFFERSONIAN,

Publisher

\$ 33.75

NOTICE OF HEARING
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:
Petition for Special Hearing
Case Number: 88-454-SPH
SW/corner Smithwood Avenue & Edmondson Avenue
(126 Smithwood Avenue)
11th Election District
5th Councilmanic District
Petitioners: James R. Burke, et ux
Hearing Date: Tuesday, May 17, 1968 at 9:00 a.m.
Special Hearing: The continued use of 126 Smithwood Avenue as a two-apartment dwelling.
In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.
J. ROBERT HAINES
Zoning Commissioner of Baltimore County
4322 Ave. 28.

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

March 19, 1968

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Hearing
Case Number: 88-454-SPH
SW/corner Smithwood Avenue & Edmondson Avenue
(126 Smithwood Avenue)
11th Election District - 5th Councilmanic District
Petitioners: James R. Burke, et ux
HEARING SCHEDULED: TUESDAY, MAY 17, 1968 at 9:00 a.m.

Special Hearings The continued use of 126 Smithwood Avenue as a two apartment dwelling.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of Baltimore County
cc: Dawn Oxley Musgrave, Esq.
James R. Burke, et ux
Re: Julie Martin
File

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

Date: 3/3/68

Mr. & Mrs. James R. Burke
126 Smithwood Avenue
Baltimore, Maryland 21228

RE: Petition for Special Hearing
Case Number: 88-454-SPH
SW/corner Smithwood Avenue & Edmondson Avenue
(126 Smithwood Avenue)
11th Election District - 5th Councilmanic District
Petitioners: James R. Burke, et ux
HEARING SCHEDULED: TUESDAY, MAY 17, 1968 at 9:00 a.m.

Dear Mr. & Mrs. Burkes:

Please be advised that \$7.63 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN(S) AND POST(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) to the Zoning Office, County Office Building, Room 111, Towson, Maryland 21204 fifteen (15) minutes before your hearing is scheduled to begin.

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 52453
DATE: 5/17/68 ACCOUNT: 1111111111
AMOUNT: \$ 71.00
RECEIVED FROM: James R. Burke
FOR: 126 Smithwood Ave
VALIDATION OR SIGNATURE OF CASHIER

PETITION FOR SPECIAL HEARING TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the continued use of 126 Smithwood Avenue as a two apartment dwelling.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Petitioner: Charles Alan Burke
(Type or Print Name)
Signature: Charles Alan Burke
Address: 122 Smithwood Avenue
Catonsville, MD 21228
City and State
Attorney for Petitioner: Dawn Oxley Musgrave
(Type or Print Name)
Signature: Dawn Oxley Musgrave
Address: One Overbrook Rd
Baltimore, MD 21228
City and State
Attorney's Telephone No.: (301) 744-8675
Legal Owner(s): James R. Burke
(Type or Print Name)
Signature: James R. Burke
Address: 126 Smithwood Avenue
Baltimore, MD 21228
City and State
Name, address and phone number of legal owner, contact purchaser or representative to be contacted: Dawn Oxley Musgrave (attorney)
One Overbrook Road 744-8675
Baltimore, MD 21228
Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 2nd day of June, 1968, that the subject matter of this petition be advertised, as

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 47575
DATE: 4/17/68 ACCOUNT: 1111111111
AMOUNT: \$ 100.00
RECEIVED FROM: James R. Burke
FOR: 126 Smithwood Ave
VALIDATION OR SIGNATURE OF CASHIER

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of the following finding of facts:

DESCRIPTION OF 126 SMITHWOOD AVENUE
Beginning for the same on the South side of Edmondson Avenue, at the point of beginning of the parcel of ground which by deed dated December 15, 1922, and recorded among the Land Records of Baltimore County in Liber W.P.C. NO. 566, folio 332, sc., was conveyed by Anthony A. Bergler to said Leonard W. Porter, and running thence Easterly binding on the South side of Edmondson Avenue one hundred and fifty five feet to the center of Smithwood Avenue as now laid out twenty five feet wide; thence Southerly along the center line of Smithwood Avenue fifty-nine feet and eight inches to the lot of ground which by Deed dated July 23, 1923, and left for record among the Land Records of Baltimore County on July 9, 1923, was conveyed by said Leonard W. Porter and wife to Harold F. Lacey and wife; thence westerly parallel with the third line of the whole lot so conveyed by said Bergler to said Porter one hundred and forty-two and seven-tenths feet to intersect the fourth line of said whole lot, and thence Northerly on said fourth line one hundred and eleven and six-tenths feet to the place of the beginning.

Said deed being recorded in and among the land records of Baltimore County in Liber E.H.K. 5354, folio 353 ac.

May 11, 1988

TO WHOM IT MAY CONCERN :

THIS STATEMENT ACKNOWLEDGES THAT I AM A RESIDENT OF THE PROPERTY KNOWN AS 112 SMITHWOOD AVENUE IN CATONSVILLE, MARYLAND - AND HAVE LIVED AT THIS ADDRESS SINCE 1951.

TO THE BEST OF MY KNOWLEDGE, THE PROPERTIES KNOWN AS 122 AND 126 SMITHWOOD AVENUE EXISTED WITH APARTMENTS SINCE THAT TIME. I AM LESS CERTAIN ABOUT 124 SMITHWOOD, ALTHOUGH IT HAS BEEN USED AS A TWO-APARTMENT DWELLING FOR QUITE A WHILE.

THESE HOUSES HAVE BEEN STEADILY OCCUPIED, HAVE BEEN UPGRADED AND WELL MAINTAINED.

SINCERELY YOURS,

Lillian A. Hart
Lillian A. Hart

*Subscribed before me at Catonsville, Md.
May 12, 1988.*

My Commission Expires 7/1/90

PETITIONER'S
EXHIBIT 2A

January 22, 1988

MRS. AUDREY BURKE
126 Smithwood Avenue
Baltimore, Maryland 21228

Dear Mrs. Burke:

This is to state that I resided in the second floor apartment at 126 Smithwood Road from August, 1947 until November, 1950.

Yours truly,

William H. Blumer
WILLIAM H. BLUMER

Sworn and subscribed to before me this 22nd day of January, 1988

John H. C.
J. C. CURRIE
Notary Public
My Commission expires July 1, 1990

PETITIONER'S
EXHIBIT 2B

March 15, 1988

TO WHOM IT MAY CONCERN:

I resided at 119 Smithwood Avenue from approximately 1934 to 1950 and 116 Smithwood Avenue from 1950 to 1958.

I have personal knowledge that the home at 126 Smithwood Ave. has been occupied continuously as a 2 apartment residence since before 1951. 124 Smithwood Avenue has been occupied as a 2 apartment residence since 1947 and 122 Smithwood Avenue since the early 1940's.

I have personally been acquainted with many of the tenants who occupied these apartments, namely the Goetzingers (126), Clotary's (122), Wells (122), Hoopers (122), Harold Lacey (124), and Emma Airy (122).

Sincerely,

Ann Bockmiller Martin
Ann Bockmiller Martin
5506 Knollview Court
Baltimore, Md. 21228
Phone: 301-747-3419

STATE OF MARYLAND, COUNTY OF BALTIMORE

ON THIS 15th DAY OF MARCH, 1988, before me, the undersigned personally appeared.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

William H. Blumer
Notary Public

My Commission Expires: 7/1/90

PETITIONER'S
EXHIBIT 2C

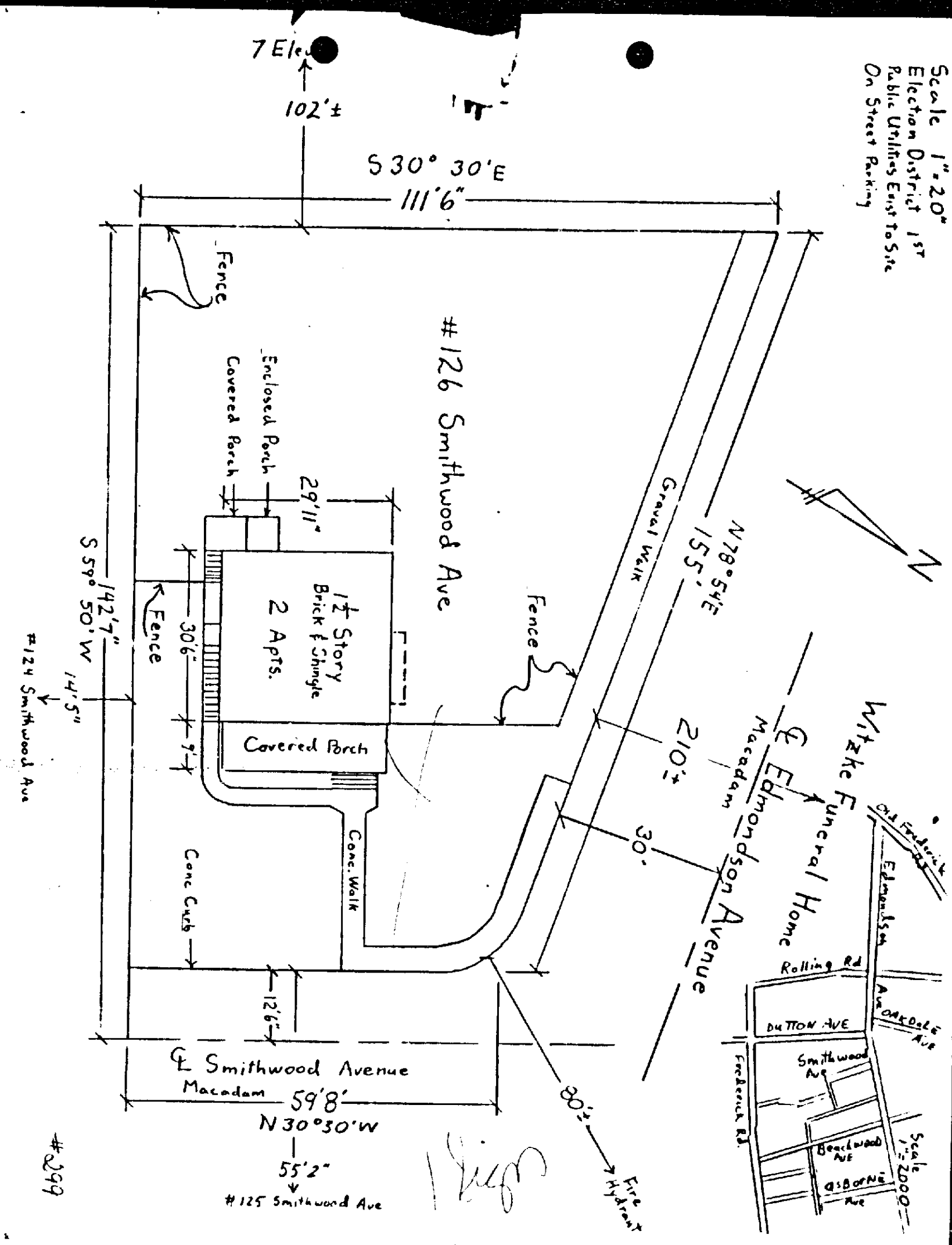
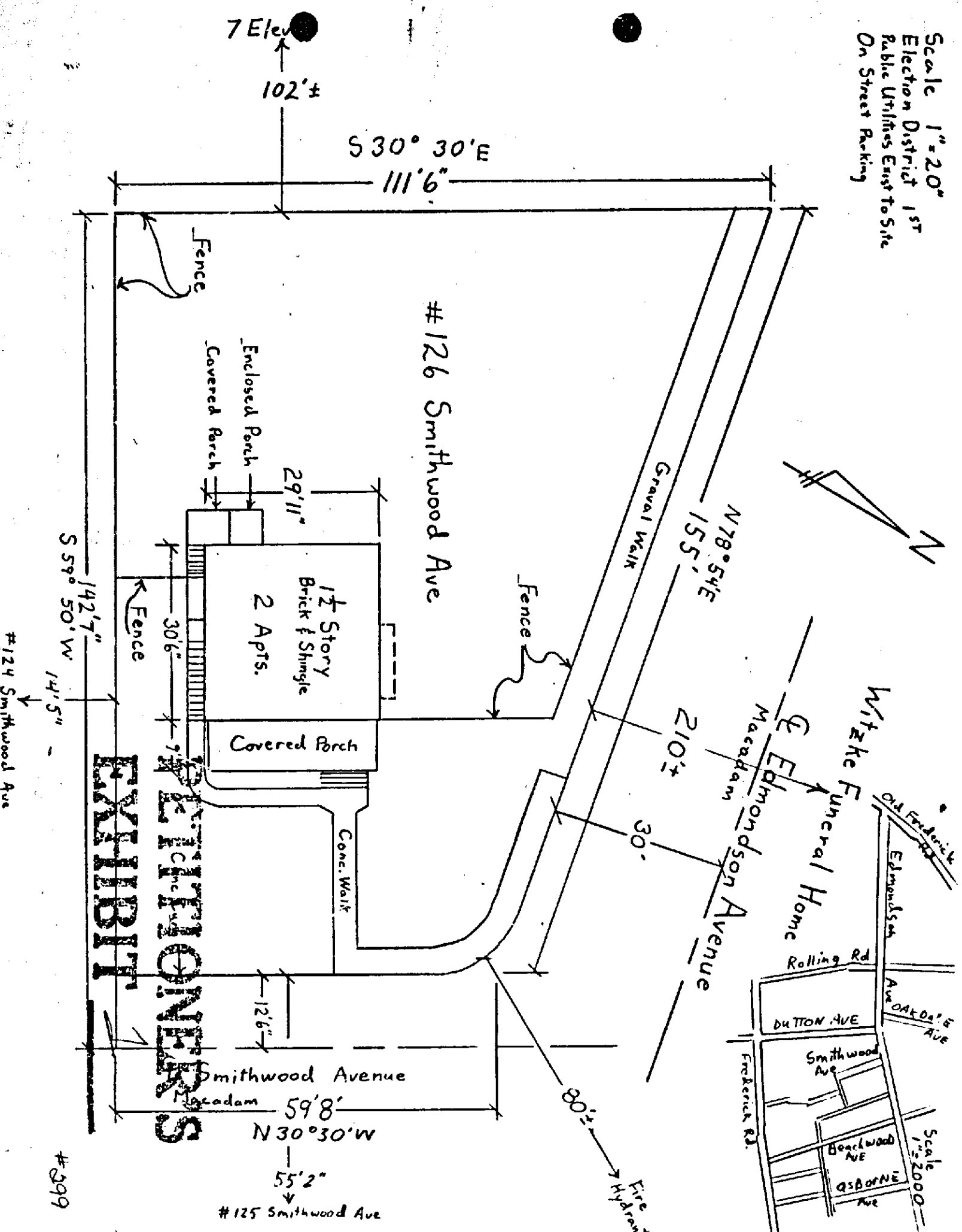
April 16, 1988

I have lived at 125 Smithwood Avenue, Catonsville since 1971 and as to my knowledge then and now the houses at 122, 124 and 126 Smithwood Avenue have been continuously used as 2-unit residential dwellings.

Respectfully,

Margaret Riely Devolles
Margaret Riely Devolles

PETITIONER'S
EXHIBIT 2D



To Whom It May Concern:

I have lived at 125 Smithwood Avenue, Catonsville since 1971 and as to my knowledge then and now the houses at 122, 124 and 126 Smithwood Avenue have been continuously used as 2-unit residential dwellings.

I have lived at 125 Smithwood Avenue, Catonsville since 1971 and as to my knowledge then and now the houses at 122, 124 and 126 Smithwood Avenue have been continuously used as 2-unit residential dwellings.

PETITIONER'S
EXHIBIT 2E

88-454-SPH

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this

2nd day of March, 1988.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Petitioner: James R. Burke, et ux
Petitioner's Attorney: Dawn Oxley Musgrave
Received by: James E. Dyer
Chairman, Zoning Plans Advisory Committee

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: James Dyer
Zoning Supervisor
FROM: James Thompson
Zoning Enforcement Coordinator
SUBJECT: Item No. 299 (if known)
Petitioner: James R. Burke (if known)

Date: 2/17/88

VIOLATION CASE # 88-1175

LOCATION OF VIOLATION 126 Smithwood Avenue

DEFENDANT James and Kathryn Burke ADDRESS 126 Smithwood Avenue

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following persons:

NAME
Julio Martin

ADDRESS
121 Smithwood Avenue

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Zoning Enforcement Coordinator, so that the appropriate action may be taken relative to the violation case.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. J. Robert Haines
Zoning Commissioner
FROM: P. David Fields
Director of Planning and Zoning
SUBJECT: Zoning Petition Nos. 88-452-SpH
88-453-SpH, 88-454-SpH,
88-456-SpH, 88-457-SpH

Date: April 13, 1988

In view of the subject of this petition, this office offers no comment.

P. David Fields
P. David Fields
Director

PDF:JCH:dme

cc: Ms. Shirley M. Hess, Legal Assistant, People's Counsel
File

RECEIVED
APR 15 1988

ZONING OFFICE

cc: Dawn Oxley Musgrave
4/15/88

Baltimore County
Fire Department
Towson, Maryland 21204-2586
494-4500

Paul H. Reincke
Chief

March 2, 1988

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Dennis F. Rasmussen
Dennis F. Rasmussen
County Executive

Re: Property Owner: James R. Burke, et ux

Location: SW/C Smithwood Avenue and Edmondson Avenue

Item No.: 299

Zoning Agenda: Meeting of 3/1/88

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals or _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at _____
EXCEEDS the maximum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- (x) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.
- () 6. Site plans are approved, as drawn.
- () 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *John F. O'Neill*
Noted and Approved: *John F. O'Neill*
Planning Group
Special Inspection Division

/j1

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
494-3554

RECEIVED
APR 7 1988

ZONING OFFICE

March 31, 1988

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dennis F. Rasmussen
Dennis F. Rasmussen
County Executive

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 292, 293, 294, 295, 297, 298, (299) and 300.

Very truly yours,

Michael S. Flanagan
Michael S. Flanagan
Traffic Engineer Associate II

MSF/pml-b

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 2, 1988

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Dawn Oxley Musgrave, Esquire
One Overbrook Road
Catonsville, Maryland 21228

RE: Item No. 299 - Case No. 88-454-SPH
Petitioner: James R. Burke, et ux
Petition for Special Hearing

Dear Ms. Musgrave:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:dt

Enclosures